is equivalent to the grant of a fresh licence. I agree that the conditions of the licence have not in fact been broken in this case. He cited:—

The Queen v. *Kay*, 10 Q. B. D. p.213.
Sharpe v. *Wakefield*, 21 Q. B.D. p.66.

DEANE, J. delivered an oral judgment. He accepted the argument of Counsel for the Defendants and gave judgment in their favour accordingly with costs and a certificate for two counsel.

Solicitors for Plaintiff—*Sisson & Delay.*
Solicitors for Defendants—*Drew & Napier.*

[ORIGINAL CIVIL JURISDICTION]
MILLS, J.
July 27, 1933.

CHANG KAM LONG v. H. H. BUSFIELD AND ANOTHER.

[SINGAPORE SUIT No. 1068 of 1932]

Settled land—Repairs—Apportionment of costs as between capital and income.

A Testator devised his immoveable property on certain trusts during the lives of certain persons then in being, and for division on the death of the last survivor. Much of the property was old and required considerable repairs and renewals from time to time. The beneficiaries entitled to the income during the trust term contended that part of such expenditure should be borne by capital and not by income.

Held,—

(i) Repairs which are usually done in the Colony by a person in occupation of premises are ordinary repairs the cost of which must fall upon the tenant for life.

(ii) Repairs which are necessary for the preservation of the property may be executed by the Trustees under the heading of "salvage" and paid for from capital.

(iii) With regard to all other repairs and improvements the Trustees should apply to the Court for directions.

(iv) Upon such an application the Court has a general jurisdiction to give leave to make judicious repairs or improvements and will adjust the burden of expenditure equitably between the tenant for life and the remainderman.

Trial of issue.

By his Will dated the 6th July, 1916, Thio Tiauw Siat devised and bequeathed the residue of his immoveable property to his executors upon certain trusts during a trust term specified as the lives of ten named persons and the survivor of them.

Among other trusts, the Testator's house No. 14, Leith Street, was to be maintained as a family house and the Executors and Trustees were authorised to expend during the trust term such sum as they thought proper not exceeding the monthly sum of $250 "such payment to be made in order to defray out of such, the costs of the ordinary repairs and painting and whitewashing and the lighting up of the said family house and servants' wages and general expenses necessarily incident to the upkeep of the said family house and family property and shall include the payment of assessment and general and domestic water rates but I particularly declare that no part of such sum so to be paid as aforesaid shall be expended in supplying food or drink or clothing to any of the persons for the time being entitled, to occupy the said family house as aforesaid or for the upkeep of any horses or carriages."

The Testator further directed his said Trustees to hold all the residue and remainder of his said moveable and immoveable property upon trust as to the immoveable property to manage rent let or lease out the same upon such terms as his Trustees should think fit and to divide the annual income and to pay the same during the said trust term to the life tenants therein specified.

Many of the houses belonging to the estate were in a poor condition of repair and some were uninhabitable. The Trustees executed repairs which cost several thousands of dollars and their architects reported that further heavy expenditure was necessary to put and keep the properties into tenantable condition. One old building which could not be let was converted into shop houses and thus became lettable.

At the time there were no capital moneys available the capital being represented by the settled land, and all these repairs and improvements were paid for in the first place out of income, leaving the question of the ultimate incidence of the cost as between capital and income for decision later.

An administration action having been started and a decree made therein, the Trustees applied to the Court for directions as to how the cost of the repairs and improvements was to be borne as between capital and income. On that application persons were appointed to represent the two classes of beneficiaries concerned under the Will of the Testator namely the class of all those who were interested in contending that all the cost should be borne by income (i.e. the remainderman) and the class of all those who were interested in contending that all the cost should be borne by capital (i.e. the tenants for lives).

An issue was by consent ordered to be tried between them to decide these questions of mixed fact and law.

Laycock for the Trustees, referred to the following authorities, *Conway* v. *Fenton*, L.R. 40 Ch.D. 512, *re Clitheroe's Settled Estates*, 20 L.T. 6, *In re de Teissier's Trusts*, L.R. (1893) 1 Ch. 153, Lewin on Trusts, Godefroi on Trusts and Halsbury's Laws of England.

E. A. Stevens for the life tenants referred to *In re Tucker's Settled Estates*, L.R. (1895) 2 Ch. 468, and *In re Farnham's Settlement*, L.R. (1904) 2 Ch. 561.

Da Silva for the remaindermen referred to *In re Tubbs*, L.R. (1915) 2 Ch. 137, and Theobald on Wills.

MILLS, J.—In this proceeding, the position is that the Receivers and the Trustees of the estate of Thio Tiauw Siat deceased have expended certain moneys upon the immoveable property, and it appears expedient to expend more moneys in the future.

The question for decision is, what part of such moneys is properly chargeable to capital and to income respectively.

The will of Thio Tiauw Siat directs, in effect, that the "ordinary repairs" of the family house, 14, Leith Street, Penang, are to be paid for out of a monthly sum not exceeding $250.

I have to interpret the expression "ordinary repairs." I construe this expression to mean "repairs which are usually done in the Colony by a person in occupation of premises," *cf.* the judgment of Lopes, L.J. in *In re Tucker's Settled Estates* (1895, 2 Chancery, at p. 473).

Works other than ordinary repairs will fall into 2 classes.

(a) repairs which are necessary for the preservation of the property;

(b) works other than (a).

As regards (a), the trustees may execute these under the heading of "Salvage" and may pay for them from capital.

As regards (b), the trustees should apply to the Court for directions.

Regarding the immoveable property other than 14, Leith Street, Penang, the will is silent as to expenditure on works, but it empowers the trustees "to manage, to rent let or lease." I construe this expression to mean that the trustees are empowered to carry out such works as are proper to render the property tenantable.

Such "proper works" will fall into two classes

(a) repairs which are necessary for the preservation of the property;

(b) "proper works" other than (a).

As regards (a), the trustees may pay for these out of capital.

As regards (b), the trustees should pay for these out of income.

If the trustees desire to execute repairs other than such "proper works," they should apply to the Court for directions.

The Supreme Court of the Colony has, by virtue of section 8 clause (a) of Ordinance No. 101 (Courts) the same jurisdiction and authority as was formerly exercised in England by the High Court of Chancery; and such "jurisdiction and authority" will include the "general" or "original" jurisdiction by virtue of which the High Court of Chancery gave leave to make judicious repairs, and adjusted the burden of expenditure equitably between the tenant for life and the remainderman. (*CF.* Godefroi on Trusts and Trustees, p. 338).

Moreover, the Supreme Court has wide powers of authorizing expenditure under Section 56 of the Trustees Ordinance, 1929.

I direct the Registrar to make the following enquiries as regards—

(A) expenditure already incurred, and
(B) expenditure proposed to be incurred, viz.

I. In the case of 14, Leith Street, Penang

(a) What works are repairs which are usually done in the Colony by a person in occupation of premises

(b) What works other than (a) are necessary for the preservation of the property

(c) What works other than (a) and (b) it is judicious to execute

(d) In what manner the cost of the works (c) should be equitably apportioned between capital and income.

II. In the case of the other immoveable property

(i) What works are proper to render the property tenantable

(ii) Which of the works (i) are necessary for the preservation of the property

(iii) What works other than (i) it is judicious to execute

(iv) In what manner the cost of the works (iii) should be equitably apportioned between capital and income.

Order accordingly.

Solicitor for the Plaintiff—*Claude da Silva.*

Solicitors for the Defendants (Trustees)—*Braddell Brothers.*

Solicitors for Choo Yun Kum (representing the life tenants)—*Allen & Gledhill.*

THE END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.